



## TOWN OF BEAUX ARTS VILLAGE

### BOARD OF ADJUSTMENT

### MINUTES

August 5 2006  
Donworth

#### **VARIANCE NO. 06-03**

The applicants are Jeff and Marji Jochums. The property subject to this variance request is located at 10405 SE 28<sup>th</sup> Place, Beaux Arts, WA. The property is legally described as Lot 1 & 5, Block 10 of the Town of Beaux Arts Village recorded map. The Parcel No. is 062900-0459-0.

**PRESENT:** Acting Board Chairman Steve Matsudaira, Boardmembers Peggy Bates and Robin Stefan.

**GUESTS:** Town Planner Mona Green; Applicants Jeff and Marji Jochum; Architect Roger Katz, Helen Lewis, Danny Vassen, Karen Scott, Jane Leffingwell, and Julia Morse.

**DEPUTY TOWN CLERK:** Betsy Donworth

#### **FINDINGS:**

Applicants Jochums seek relief from Section 8.F of the Town of Beaux Arts Village Zoning Code Ordinance (No.333) in order to construct a new residence with a Gross Floor Area Ratio (GFAR) that exceeds the maximum 35% that is permitted. The proposed residence, including a below-grade garage, would contain 3,303 square feet (36.87% GFAR) rather than the allowed 3,135 square feet (35% GFAR). Section 17 of the Ordinance allows the Board of Adjustment to vary the provision of Section 8 provided that the board finds that all five variance criteria are met.

As required in Ordinance No. 258, notice for a public hearing at 10405 SE 28<sup>th</sup> Place was posted on July 19, 2006 and published on July 19, 2006. Notices were sent to property owners within 300 feet of the property on July 19, 2006.

The following exhibits were submitted:

- Exhibit A - Application (7/12/06)
- Exhibit B - Staff Analysis (7/26/06)
- Exhibit C - Public Hearing Notices
- Exhibit D - Public Hearing Affidavits
- Exhibit E - Letter from Sylvia Hobbs (7/25/06)
- Exhibit F - Applicant's Supporting Documents/plans
- Exhibit G - House Model

Acting Chairman Matsudaira asked the Boardmembers present if they had participated in any ex parte conversation regarding this application. No Boardmember has had any ex parte conversations.

A letter from Sylvia Hobbs was entered into the record, asking that the Board deny the Jochum variance. Acting Chairman Matsudaira asked if any Boardmember had a conflict of interest in hearing the variance. No conflict of interest was noted. There were no challenges from the applicant or public as to appearance of fairness of any Boardmember to hear the variance.

### **Staff Report:**

Town Planner Mona Green stated that Jeff and Marji Jochums purchased the property at 10405 SE 28<sup>th</sup> Street earlier this year. According to the project plans, the lot contains 8,959 square feet, making it a non-conforming lot within Beaux Arts because it is less than the required lot size of 10,000 square feet.

The Jochums intend to demolish the existing residence and construct a new, two-story home with a basement and below-grade garage. In its proposed configuration, the home would include a 1,342 square foot basement, a 450 square foot garage, a 1,979 square foot main floor, and an 820 square foot second floor, for a total of 4,591 square feet. In this case, the Beaux Arts Zoning Code permits a basement exclusion of 1,288 square feet, based upon the percent of basement wall located below-grade. The net result is a home with a Gross Floor Area of 3,303 square feet.

The Applicants have suggested that because the garage is located below grade (below the first floor of the residence), the garage should be considered as part of the basement and subject to the same Gross Floor Area exclusions that are permitted for a basement. Previous zoning code and building code interpretations have not included a below grade garage as part of basement square footage for purposes of gross floor area calculations.

### **RELEVANT ZONING CODE PROVISIONS**

**Definition - Gross Floor Area:** the number of square feet of total floor bounded by the exterior faces of the building. The gross floor area of a single-family dwelling shall include: A. the main building, including but not limited to attached accessory structures. B. all garages and covered parking areas, and detached accessory buildings with a gross floor area over 120 square feet. C. the area of any deck that is 30 inches or more above finished grade at any point. D. that portion of a basement as defined in the Uniform Building Code that projects above finished grade as calculated in the following example. E. When an attic is habitable space

as defined in the Uniform Building Code (UBC), the square footage is counted in GFAR.

**Definition – Basement Floor Area Calculation:** The Beaux Arts Zoning Code excludes from the Gross Floor Area the portion of the basement floor area that is below finished grade. The portion of the basement that will be excluded is calculated as shown here.  $\text{Portion of Excluded Basement Floor Area} = \frac{\text{Total Basement Area} \times \sum (\text{Wall Segment Coverage} \times \text{Wall Segment Length})}{\text{Total of all Wall Segment Lengths}}$  Where the terms used in the equation are defined as follows: Total Basement Area = the total amount of all basement floor area. Wall Segment Coverage = the portion of an exterior wall below finished grade. It is expressed as a percentage. (Refer to example) Wall Segment Length = is the horizontal length of each exterior wall in feet.

**Definition - Basement:** any floor level below the first story in a building, except that a floor level in a building having only one floor level shall be classified as a basement unless such floor level qualifies as a first story as defined herein.

**Definition - Non-conforming Lot:** an established but non-conforming lot is a fractional part of subdivided lands that at the time of the adoption of Ordinance No. 21 (6/23/59) was occupied by a single-family dwelling house but is of insufficient area and dimension to meet the minimum zoning requirements of the Town.

**Section 8.** Location, Size and Height of Buildings and Structures, Appurtenant Buildings, Structures and Devices; Lot Coverage; and Gross Floor Area. **F.** The gross-floor-area ratio (GFAR) shall not exceed thirty-five percent (35%) of the total building lot.

## ***VARIANCE CRITERIA & ANALYSIS***

The Jochums are asking the Board of Adjustment to consider two questions. The first question is whether the garage that is located below grade should be considered in the same manner as a basement for GFAR purposes. A positive answer to that question would make the second question moot. If the garage is treated as a basement, the need for this variance is eliminated. The second question, which follows a negative response to the first question, is whether to grant a variance for an excess in the GFAR, because the excess square footage is located below grade.

Previous interpretations of “basement” and “garage” have been reviewed, and consistent with those interpretations is the fact that the garage is considered separately and differently than a basement. The Zoning Code specifically includes in gross floor area “the number of square feet of total floor bounded by the exterior

faces of the building. The gross floor area of a single-family dwelling shall include: A. the main building, including but not limited to attached accessory structures. B. all garages and covered parking areas, and detached accessory buildings with a gross floor area over 120 square feet. C. the area ...”

Per Ordinance 333 Section 17, the Board of Adjustment may grant a variance from Section 8.F of Zoning Code provided the Board finds that all five of the variance criteria listed in Section 17 of the Ordinance have been met.

*No variance shall be approved or approved with modifications unless the Board finds that all of the following five criteria have been met:*

*1. The variance will not constitute a grant of special privilege inconsistent with the limitations upon uses of other properties in the Town.*

Applicants do not satisfy this criterion. Every new home in Beaux Arts is faced with the same zoning related constraints. To create an oversize home on this lot would be no different than allowing an oversize home on any other lot within the Village. It would be a grant of special privilege to allow this lot to have a new home in excess of 35% GFAR.<sup>1</sup>

*2. The granting of the variance will not be materially detrimental to the public welfare or injurious to other properties or improvements in the Town. It will be consistent with the Town’s Comprehensive Plan.*

Applicants satisfy this criterion. The additional 168 square feet requested would not be detrimental to the community, nor would it contradict the Comprehensive Plan. The proposed plan meets the setback requirements, thus providing the required open space on the lot.

*3. The variance is necessary because of special circumstances relating to the size, shape, topography, location, surroundings, and special features of the subject property.*

Applicants do not satisfy this criterion. Although the lot is non-conforming due to its size, the Town’s Gross Floor Area regulations are designed to create a balance between lot size and the proposed structure. The 35% maximum GFAR that is permitted allows a 3,135 (GFA) square foot home to be built.

*4. The need for a variance has not arisen from actions previously taken by the applicant (owner).*

---

<sup>1</sup> Note that the three most recent new home constructions in the Village were accomplished within the allowed GFAR: the two homes at the northeast corner of SE 28<sup>th</sup> and 105<sup>th</sup> Ave. SE (10,000 square foot lots), and the home on the west side of 104<sup>th</sup> Ave. SE (5,400 square feet), near the northern entrance to the Village.

Applicants do not satisfy this criterion. The request is to construct a new home in excess of the allowable GFAR. The need for this variance comes from the design of the home. Applicants could redesign and build a new home that meets all of the zoning regulations.

*5. It is the minimum necessary to permit the owner reasonable use of the property.*

Applicants do not satisfy this criterion. Reasonable use of the property may be attained without the granting of this variance. The Zoning Code allows construction of a 3,135 square foot home. Applicants could reduce the proposed square footage by 168 square feet and be in conformance with the Code.

## CONCLUSION

**Planner Green stated that applicants do not satisfy four of the five variance criteria and recommended denial of Variance 06-03.**

### Applicant Presentation:

Architect Roger Katz spoke on behalf of the Jochums. He stated that he realized that it would not be possible for the design to meet the 5 variance criteria required by Beaux Arts; however, he did not come to discuss the variance but the design of the house and explain why he designed the house as he did. Considering that the intent of GFAR is to control bulk, the current design with a below-grade garage actually reduces the bulk substantially - if the garage is above grade, the footprint of the home is larger. If placing the garage below grade actually reduces bulk, could this be looked at by the Board of Adjustment – can a different interpretation be considered? Jeff added that he understood why an above grade garage would originally be included in GFAR, but when it is put underground, this is something that should be looked into. Robin questioned why, in order to comply with GFAR, not reduce square footage of the home. Applicants looked into; the house suffers with this solution.

Architect Katx summarized the Jochum's response to the 5 variance criteria:

- 1) The subject property lot size is 8,959 square feet, which makes the lot non-conforming according to the Comprehensive Plan, paragraph 1.2, which establishes the minimum lot size as 10,000 square feet. The total allowable Gross Floor Area Ratio (GFAR) is 35% of lot area, which would permit 3,500 square feet for a 10,000 square foot lot. The GFAR for the subject property is limited to 3,135 square feet.

In an attempt to maximize the available GFAR for living space, the proposed design situates the garage in the below grade basement area. Garage area at grade is

considered to be a part of the allowable GFAR. The inclusion of Garage area in the GFAR calculations derives from the desire to minimize building mass on the building lots contained within the Village. Placement of the Garage in below grade space achieves the same goal without penalizing the homeowners for ownership of a non-conforming lot and limits the total GFAR to 35% of the lot area.

This variance does not constitute granting of a special privilege with regards to other properties in town because the town already allows certain types of basements to be exempted. Applicants are not asking for any more privilege than the town zoning already provides for basements.

- 2) The Comprehensive Plan focuses largely on the unique characteristics of the Town environment. Specifically, it states, "To maintain Beaux Arts' desirability, and its residential character, an emphasis upon community spirit and quality of life should be perpetuated. Significant features of the community including the small size and walking scale of the Town, a limited street grid and narrow streets, an emphasis upon beauty and respectful individualism in building and landscaping, requirements for off-street parking, limitations of the water supply, and the need to contract for police and fire services and provide access for emergency equipment; all dictate the advisability of retaining at a minimum the current lot size and land use restrictions.

Granting of the requested variance will not allow the homeowner to exceed the established GFAR for the lot size, thus protecting the desired characteristics of the community. Furthermore, it will ensure that the building mass be scaled appropriately to the small lot size, in that placement of the garage below grade will eliminate the need to create more two story area above grade. Given the non-conforming lot size, and the limit of 35% lot coverage, the increase in lot coverage from an above grade garage would require the incorporation of habitable space above the garage footprint. Smaller lots look more to scale with single story buildings than with two story buildings. Finally, it is consistent with the Comprehensive Plan to allow non-conforming lots to meet the goals of the Comprehensive Plan by putting space that would count towards the GFAR underground and out of sight.

- 3) The subject property has a lot size of 8,959 square feet. The average lot size in the Town, as stated in the Comprehensive Plan is 12,000 square feet. The variance request of the partial exemption of the below grade garage would allow the homeowners to utilize the GFAR limit for habitable space above grade, and yet keep their total GFAR to the permitted 35% of lot size.

In addition, the subject lot contains an 8 foot drop in elevation from front to back of the property. This significant elevation change makes it very difficult to place a garage on grade level and not have the remaining building footprint consume most of the useable yard area. Utilizing an underground garage is a far more preferable design solution, consistent with the aesthetic criteria of the Comprehensive Plan.

- 4) This variance request has not arisen from any actions previously taken by the applicant, other than the purchase of a non-conforming lot. However, it was the town that deemed the lot non-conforming in the Comprehensive Plan.
- 5) The granting of the partial exemption of the below grade garage area will allow the homeowners to better utilize their GFAR for living space. The variance request asks for an exemption of 168 square feet of the garage area, which is the minimum required to meet the 35% total GFAR limitation of the building area.

### **PUBLIC TESTIMONY**

Robin Stefan clarified that all the Board of Adjustment can consider is the variance application and if it does or does not satisfy the 5 variance criteria – not any changes to the zoning code.

Karen Scott stated that she understands the comments about code interpretation; however, the proposed design is good for a small lot. She believes that it can be argued that a variance could be granted, as this is the type of project that the variance process is for.

Jane Leffingwell stated that she is concerned about what is happening in Beaux Arts due to big homes. She felt that Roger Katz has a convincing argument, but is deeply concerned about any precedent that might be set by allowing an increase in GFAR.

Helen Lewis stated that when a homeowner is starting with a cleared lot that they should not try to ask for a variance. The zoning codes have been developed with the idea of bringing home into conformity with zoning codes.

Clerk Donworth read and entered the letter from Sylvia Hobbs into the record. (see attached).

Roger Katz reiterated that not granting the variance will create more bulk. Robin Stefan added that if the variance is not granted, this does not mean that the house cannot be built.

Acting Chairman Matsudaira closed the public hearing.

The Board members have reviewed the application submittal for Variance 06-03 against the five variance criteria of Ordinance No.313, Section 1.

### **From the foregoing findings the board makes the following CONCLUSIONS:**

1. The variance will not constitute a grant of special privilege inconsistent with the limitations upon uses of other properties in the Town

***The Board is unanimous that Criterion 1 is not satisfied.***

2. The granting of the variance will not be materially detrimental to the public welfare or injurious to other properties or improvements in the Town. It will be consistent with the Town's Comprehensive Plan.

***The Board is unanimous that Criterion 2 is satisfied.***

3. The variance is necessary because of special circumstances relating to the size, shape, topography, location, and special features of the subject property.

***The Board is unanimous that Criterion 3 is not satisfied.***

4. The need for a variance has not arisen from actions previously taken by the applicant (owner).

***The Board is unanimous that Criterion 4 is not satisfied.***

5. It is the minimum necessary to permit the owner reasonable use of the property.

***The Board is unanimous that Criterion 5 is not satisfied.***

***Variance No. 06-03 does not satisfy all five of the variance criteria.***

**DECISION: MOTION: Based on the foregoing findings and conclusions Variance No. 06-03 does not satisfy the 5 variance criteria and is hereby denied.**

The Board approved the motion to adjourn the meeting.

Respectfully submitted,

Betsy Donworth  
Deputy Town Clerk

***The Findings, Conclusions and Decision of Variance No. 06-03 are approved by:***

---

***Steve Matsudaira, Acting Board of Adjustment Chairman***

---

***Date***



***The variance is in force from the date of approval and the 14-day appeal period begins from the date of approval.***